IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION(REVIEW) NO. 7 OF 2006

1. Shri Govind Gopal Poy
   Raiturkar, alias Govind
   Gopal Poi Raiturkar,
   son of late Gopal Poy
   Raiturkar, aged about
   69 years, businessman,
   and his wife;

2. Smt. Nalini Govind Poy
   Raiturkar alias Urmila
   Govind Poy Raiturkar,
   daughter of late Madeva
   Poi Fondekar, aged about
   62 years, housewife,

   Both residing at H.No.992,
   Borda, Margao-Goa-403 602. ... Applicants

versus

1. Shri Santosh Ratanji
   Ramnathkar, son of
   Ratanji Ramnathkar,
   aged about 51 years,
   Advocate and his wife.

2. Smt. Vidya Santosh
   Ramnathkar, daughter
   of V. B. Kembhabi,
   aged about 457 years,
   housewife,

   Both residing at H.No.31,
   Ramnathi, Bandora,
   Ponda, Goa. ... Respondents

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudesh Usgaonkar, Advocate for the Applicants.

Mr. S. K. Kakodkar, Senior Advocate with Mr. S. D. padiyar, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 28TH APRIL, 2006.

ORDER

Heard the learned Senior Counsel on behalf of both the parties.

2. The applicants/plaintiffs(plaintiffs, for short) have filed the present application for review of the Order of this Court dated 17-2-2006 and although clarification of the Order of this Court dated 17-2-2006 was sought by way of several prayers it has now been restricted to prayer (a) alone and according to the plaintiffs the operative part of the Order dated 17-2-2006 should read as follows:-

> "The Defendants, their agents, servants, family members and representatives, be restrained by way of temporary injunction,

> from carrying on any construction encroaching upon or over the Plaintiffs' property; and particularly within or over such strip of land of the Plaintiffs' property, which is presently forming westernmost part of Chalta Nos.791 and 792 of P.T. Sheet No.239 of Margao City Survey".

3. The Plaintiffs had filed a suit and along with it an application for temporary injunction dated 7-10-2005 to restrain the Defendants from carrying on any further construction encroaching upon or over the Plaintiffs property and particularly within and over such strip of land over the Plaintiffs property which is presently forming westernmost part of Chalta Nos.791 and 792 of P.T. Sheet No. 239 of Margao City Survey and also for temporary mandatory injunction for directing the Defendants to demolish or remove any construction or material erected or placed within or over the plaintiffs property and particularly within or over the said strip. On the same day, the learned trial Court passed an exparte Order directing the maintenance of status quo but after hearing both the parties by Order dated 11-11-2005 the application for temporary and

mandatory injunctions came to be rejected and the Order dated 7-10-2005 came to be vacated.

4. The Plaintiffs filed an appeal before this Court and when the matter came up for admission on 22-11-2005 this Court passed an Order which reads as follows:-

> "Notice, returnable after four weeks. In the meanwhile, parties are directed to maintain status quo as on today".

5. The appeal came to be disposed of by Order dated 17-2-2006. In disposing of the appeal this Court observed that the said Order(11-11-2005), therefore, deserves to be set aside and the plaintiffs deserve to be granted an injunction order in their favour directing the Defendants not to carry out any construction on or above the shop no.9 of the Plaintiffs on the South-East of the property of the Plaintiffs as well as on or above the said set back area on the North-East property of the Plaintiffs. In other words, the Defendants are hereby directed to maintain a status quo on or above the said disputed portion as represented by letters M T and D Q on the plan annexed to the

plaint. The allegation that the Defendants carried out further construction inspite of the order of this Court dated 22-11-2005, will be dealt separately in MCA-08/2006. CA-328/2005, shall stand disposed of in terms of this Order.

6. Mr. S. K. Kakodkar, the learned Senior Counsel has brought to my notice that a Special Writ Petition against the Order of this Court dated 17-2-2006 has been lodged before the Apex Court on 20th instant and, therefore, it would be proper for this Court to defer the hearing of this review application. In reply, Mr. M. S. Usgaonkar, the learned Senior Counsel has placed reliance on the case of **M/s. Thungabhadra Industries Ltd.** v. **Government of A.P.** (AIR 1964 SC 1372) wherein the Apex Court observed as follows:-

> "O.XLVII R.1(1) of C.P.C. permits an application for review being filed "from a decree or order from which an appeal is allowed but from which no appeal has been preferred. In the recent case, it would be seen, on the date when the applicant for review was filed the appellant had not filed an appeal to this Court and, therefore, the terms of

> O.XLVII R.1(1) did not stand in the way of the petition for review being entertained..
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> If on that date no appeal has been filed it is competent for the Court hearing the petition for review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the application for review is finally decided the appeal itself has been disposed of, the jurisdiction of the court hearing the review petition would come to an end".

7. In my view, the aforesaid observations are a complete answer to what has been submitted by the learned Senior Counsel Mr. Kakodkar and moreover from the view I am going to take it is not at all necessary that this application for review should be kept pending only because the Defendants have lodged a Special Leave Petition before the Hon'ble Supreme Court which has not even been taken cognizance of.

8. Mr. Kakodkar, the learned Senior Counsel has further submitted that the plaintiffs have not been able to satisfy the

predicates of O.47, R.1 in order to review the Order. Mr. Kakodkar submits that the Order requires no clarification inasmuch as there is no error apparent on the face of the record nor is there any ambiguity or a mistake which stares at one's face on reading the said Order. Mr. Kakodkar has submitted that the very purpose of filing the review application is to strengthen the case of the Plaintiffs in the said Contempt Application which is pending before this Court, for having violated the Order of this Court dated 22-11-2005 and in support of the said submission Mr. Kakodkar has placed reliance on the case of **Director of Education, Uttaranchal and others** v. **Ved Prakash Joshi and others** ((2005) 6 SCC 98) wherein the Supreme Court observed "the Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the Judgment or Order. If there was no ambiguity or indefiniteness in the Order, it is for the party concerned to approach the higher Court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher Court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the

Judgment or Order. Right or wrong the Order has to be obeyed. Flouting an Order of the Court would render the party liable for contempt. While dealing with an application for contempt, the Court cannot traverse beyond the Order, non-compliance of which is alleged. It cannot say what should not have been done or what should have been done. It cannot traverse beyond the Order. It cannot test correctness or otherwise of the Order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible".

9. On the other hand, it is contended by Mr. Usgaonkar, the learned Senior Counsel on behalf of Plaintiffs that this Court did not grant temporary injunction in terms of the original prayer made in the application for temporary injunction and, therefore, the original prayer as sought by the Plaintiffs ought to be reflected in the operative part of the Order granting injunction in favour of the Plaintiffs by Order dated 17-2-2006. Mr. Usgaonkar has placed reliance on the case of **M/s Bharat Coking Coal Ltd.** v. **State of Bihar and others** (AIR 1988 SC 127). Reliance placed on both the above cases, by both the learned Senior Counsel, is misplaced. Both the cases related to contempt proceeding. In the case of **M/s Bharat Coking Coal Ltd.** v. **State of Bihar and others**

(supra) the Supreme Court had passed an order "directing maintenance of status quo as in the High Court" and the question which came for consideration was whether respondent no.4 and his son were guilty of contumacious and wilful disregard of the Order of the Supreme Court and the Court held that that should depend on the precise meaning of the words "status quo as in the High Court" and observed that the appellant rested itself content by obtaining the status quo order in terms in which it was passed and it should have for safeguarding its interests insisted upon a prohibitory order. This decision is not applicable to the facts of the case at hand.

10. In my view, the application for review of the Order is wholly misconceived in the light of the facts of the case narrated herein above. It is true that the Plaintiffs have sought, inter alia, relief of temporary injunction as well as mandatory injunction and against the said prayers what the trial Court had granted was only an Order of maintenance of status quo. The said Order dated 7-10-2005 came to be vacated on 11-11-2005 and subsequently this Court again granted an Order directing the maintenance of status quo and that was on 22-11-2005 which the Plaintiffs now complain in MCA-08/2006 that the Defendants have violated the same. In my view, the Order of this Court dated 17-2-2006 is as clear as

it could be and requires no further clarification and there is no error in the said Order, much less an error apparent on the face of the record. The defendants are restrained from carrying out any further construction in the said disputed area, namely on or about shop no.9 of the Plaintiffs on the South-East of the property of the Plaintiffs as well as on or above set back area on the North-East property of the Plaintiffs and have been further directed to maintain status quo and on or about the said disputed portion as represented by letters M T and D Q and in the light of that there is no necessity at all of any clarification so as to read the operative part in a manner suggested by the Plaintiffs. The initial effort made by formulating several prayers so as to strengthen their case for contempt has now been fairly given up.

11. In my view, there is no merit in this application and the same is hereby dismissed.

N. A. BRITTO, J.

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